1   # GOVERNMENTAL USE OF FACIAL RECOGNITION

2   # TECHNOLOGY

3   2021 GENERAL SESSION

4   STATE OF UTAH

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6   **LONG TITLE**

7   **General Description:**

8   This bill addresses the state's use of facial recognition technology.

9   **Highlighted Provisions:**

10   This bill:

11   ‣ defines terms;

12   ‣ places limitation on the circumstances under which government entities may use

13   image databases for facial recognition comparisons;

14   ‣ describes the process of, and requirements for, conducting a facial recognition

15   comparison;

16   ‣ addresses training of Department of Public Safety (the department) and government

17   entity employees;

18   ‣ provides that only the department may use a facial recognition system with respect

19   to image databases shared with or maintained by the department;

20   ‣ provides a notice requirement for government entities that use facial recognition

21   technology with respect to images taken by that government entity; and

22   ‣ describes information that is required to be released, and information that is

23   protected, in relation to a facial recognition comparison.

24   **Money Appropriated in this Bill:**

25   None

26   **Other Special Clauses:**

27   None

28   **Utah Code Sections Affected:**

29   ENACTS:

30   **77-23e-101**, Utah Code Annotated 1953

31   **77-23e-102**, Utah Code Annotated 1953

32   **77-23e-103**, Utah Code Annotated 1953

33   **77-23e-104**, Utah Code Annotated 1953

34   **77-23e-105**, Utah Code Annotated 1953

35   **77-23e-106**, Utah Code Annotated 1953

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37   *Be it enacted by the Legislature of the state of Utah:*

38   Section 1. Section **77-23e-101** is enacted to read:

39   **CHAPTER 23E. GOVERNMENT USE OF FACIAL RECOGNITION TECHNOLOGY**

40   **77-23e-101. Title.**

41   This chapter is known as "Government Use of Facial Recognition Technology."

42   Section 2. Section **77-23e-102** is enacted to read:

43   **77-23e-102. Definitions.**

44   As used in this chapter:

45   (1) "Department" means the Department of Public Safety, created in Section 53-1-103.

46   (2) "Facial biometric data" means data derived from a measurement, pattern, contour,

47   or other characteristic of an individual's face, either directly or from an image.

48   (3) "Facial recognition comparison" means the process of comparing an image or facial

49   biometric data to an image database.

50   (4) (a) "Facial recognition system" means a computer system that, for the purpose of

51   attempting to determine the identity of an unknown individual, uses an algorithm to compare

52   biometric data of the face of the unknown individual to facial biometric data of known

53   individuals.

54   (b) "Facial recognition system" does not include:

55   (i) a system described in Subsection (4)(a) that is available for use, free of charge, by

56   the general public; or

57   (ii) a system a consumer uses for the consumer's private purposes.

58   (5) (a) "Government entity" means:

59   (i) an executive department agency of the state;

60   (ii) the office of:

61   (A) the governor;

62   (B) the lieutenant governor;

63   (C) the state auditor;

64   (D) the attorney general; or

65   (E) the state treasurer;

66   (iii) the Board of Pardons and Parole;

67   (iv) the Board of Examiners;

68   (v) the National Guard;

69   (vi) the Career Service Review Office;

70   (vii) the State Board of Education;

71   (viii) the State Board of Regents;

72   (ix) the State Archives;

73   (x) the Office of the Legislative Auditor General;

74   (xi) the Office of Legislative Fiscal Analyst;

75   (xii) the Office of Legislative Research and General Counsel;

76   (xiii) the Legislature;

77   (xiv) a legislative committee of the Legislature;

78   (xv) a court, the Judicial Council, the Administrative Office of the Courts, and similar

79   administrative units in the judicial branch;

80   (xvi) a state institution of higher education as that term is defined in Section

81   53B-3-102;

82   (xvii) an entity within the system of public education that receives funding from the

83   state; or

84   (xvii) a political subdivision of the state as that term is defined in Section 63G-7-102.

85   (b) "Government entity" includes:

86   (i) every office, agency, board, bureau, committee, department, advisory board, or

87   commission of an entity described in Subsection (5)(a) that is funded or established by the

88   government to carry out the public's business; or

89   (ii) an individual acting as an agent of a government entity or acting on behalf of an

90   entity described in this Subsection (5).

91   (6) (a) "Image database" means a database maintained by a government entity that

92   contains images the government entity captures of an individual while the individual interacts

93   with the government entity.

94   (b) "Image database" does not include publicly available information.

95   (7) "Law enforcement agency" means a public entity that exists primarily to prevent,

96 detect, or prosecute crime or enforce criminal statutes or ordinances.

97   (8) "Trained employee" means an individual who is trained to make a facial

98 recognition comparison and identification and who has completed implicit bias training.

99   Section 3. Section **77-23e-103** is enacted to read:

100   **77-23e-103. Government use of facial recognition system with image database --**

101 **Restrictions -- Process -- Disclosure.**

102   (1) Except as provided in this section and in Section 77-23e-104, a government entity

103 may not use a facial recognition system on an image database.

104   (2) (a) (i) Only a law enforcement agency may make a request for a government entity

105 to conduct a facial recognition comparison using a facial recognition system.

106   (ii) Except as provided in Subsection (2)(a)(iii), a law enforcement agency shall submit

107 a request for a facial recognition comparison on an image database in writing to the

108 government entity that manages the image database.

109   (iii) A law enforcement agency shall submit a request for a facial recognition

110 comparison on an image database shared with or maintained by the department in accordance

111 with Section 77-23e-104.

112   (b) A trained employee who is employed by the government entity that maintains or

113 has access to the image database shall complete the request if the request:

114   (i) is for a purpose described in Subsection (2)(c);

115   (ii) includes a case identification number; and

116   (iii) is, if it is a request made for the purpose of investigating a crime, supported by a

117 statement of the specific crime and factual narrative to support that there is a fair probability

118 that the individual who is the subject of the request is connected to the crime.

119   (c) An individual described in Subsection (2)(b) shall only comply with requests made

120 for a purpose of:

121   (i) investigating a felony, a violent crime, or a threat to human life; or

122   (ii) identifying an individual who is:

123   (A) deceased;

124   (B) incapacitated; or

125   (C) at risk and otherwise unable to provide the law enforcement agency with his or her
126 identity.
127   (d) The law enforcement agency shall only use the facial recognition comparison:
128   (i) in accordance with the requirements of law; and
129   (ii) in relation to a purpose described in Subsection (2)(c).
130   (3) A government entity may not use a facial recognition system for a civil immigration
131 violation.
132   (4) To make a facial recognition comparison, a trained employee described in
133 Subsection (2)(b) shall:
134   (a) use a facial recognition system that, in accordance with industry standards:
135   (i) makes the comparison using an algorithm that compares only facial biometric data;
136   (ii) is secure; and
137   (iii) is produced by a company that is currently in business;
138   (b) if the facial recognition system indicates a possible match, make an independent
139 visual comparison to determine whether the facial recognition system's possible match is a
140 probable match;
141   (c) if the trained employee determines that there is a possible match that is a probable
142 match, seek a second opinion from another trained employee or the trained employee's
143 supervisor; and
144   (d) (i) if the other trained employee or the trained employee's supervisor agrees that the
145 match is a probable match:
146   (A) report the result to the requesting law enforcement agency through an encrypted
147 method; and
148   (B) return to the requesting law enforcement agency only a result that all trained
149 employees agree is a probable match; or
150   (ii) if the other trained employee or the trained employee's supervisor disagrees that
151 there is a probable match, report the fact that the search returned no results to the requesting
152 law enforcement agency.
153   (5) When submitting a case to a prosecutor, a law enforcement agency of the state or of
154 a political subdivision shall disclose to the prosecutor, in writing:
155   (a) whether a facial recognition system was used in investigating the case; and, (b)if a

156   facial recognition system was used:

157   (A) the information the law enforcement received in accordance with Subsection

158   (4)(d)(ii); and

159   (B) a description of how the facial recognition comparison was used in the

160   investigation.

161   Section 4. Section **77-23e-104** is enacted to read:

162   **77-23e-104. Department use of facial recognition system with specific images --**

163   **Restrictions.**

164   (1) The department is the only government entity in the state authorized to use a facial

165   recognition system to conduct a facial recognition comparison on an image database that is

166   maintained by or shared with the department.

167   (2) The department may only use a facial recognition system:

168   (a) for a purpose authorized in Subsection 77-23e-103(2)(c); or

169   (b) notwithstanding Subsection 77-23e-103(2)(b), to:

170   (i) compare an image taken of an applicant for a license certificate or an identification

171   card to determine whether the applicant has submitted a fraudulent or an inaccurate application;

172   or

173   (ii) provide images for a photo lineup for a purpose authorized in Subsection

174   77-23e-103(2)(c).

175   (3) Notwithstanding Subsection 77-23e-104(2)(a)(ii), a law enforcement agency shall

176   submit a request to the department to use a facial recognition system on an image database

177   maintained by the department through the Utah Criminal Justice Information System.

178   Section 5. Section **77-23e-105** is enacted to read:

179   **77-23e-105. Notice requirement.**

180   (1) When capturing an image of an individual when the individual interacts with the

181   government entity, the government entity shall notify the individual that the individual's image

182   may be used in conjunction with facial recognition technology.

183   (2) At least 30 days before the day on which a government entity other than the

184   department begins using a facial recognition system to conduct a facial recognition comparison

185   on the government entity's image database, the government entity shall:

186   (a) publish on the government entity's website:

187   (i) notice of the proposed use of facial recognition system;

188   (ii) a description of the image database on which the government entity plans to use the

189   facial recognition system; and

190   (iii) information about how to provide public comment;

191   (b) allow the public to submit written comments to the government entity within 15

192   days after date of publication;

193   (c) consider timely submitted public comments and the criteria established in this

194   Chapter in determining whether to proceed with the intended use of the facial recognition

195   system; and

196   (d) post notice of the final decision on the government entity's website.

197   (3) The process described in Subsection (2) does not create a right of appeal.

198   Section 6. Section **77-23e-106** is enacted to read:

199   **77-23e-106. Data protection and disclosure.**

200   (1) Notwithstanding Title 63G, Chapter 2, Government Records Access and

201   Management Act, data relating to a facial recognition comparison may not be used or shared

202   for any purpose other than a purpose described in this chapter.

203   (2) (a) Upon request, a government entity shall release statistical information regarding

204   facial recognition comparisons, including:

205   (i) the different types of crime for which the government entity received a request;

206   (ii) how many requests the government entity received for each type of crime; and

207   (iii) the number of probable matches the government entity provided in response to

208   each request.

209   (b) In responding to a request for a release of statistical information under Subsection

210   (2)(a), a government entity may not disclose details regarding a pending investigation.

211   (3) (a) On or after August 1 but before October 15 of each year, a government entity

212   that uses a facial recognition system to conduct a facial recognition comparison shall provide to

213   the Government Operations Interim Committee a report that discloses:

214   (i) the different types of crime for which the department received a request;

215   (ii) how many requests the department received for each type of crime;

216   (iii) the number of probable matches the department provided in response to each

217   request; and

218   (iv) the image source from which the department made each match.

219   (b) In responding to a request for a release of statistical information under Subsection

220   (2)(a), a government entity may not disclose details regarding a pending investigation.